



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2018-0307; FRL-9982-07-Region 7]

**Air Plan Approval; Nebraska; Revisions to Title 115 of the
Nebraska Administrative Code; Rules of Practice and Procedure**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Nebraska State Implementation Plan (SIP) addressing the legal practices and procedures that govern the Nebraska Department of Environmental Quality (NDEQ) relating to public record law and the State's Administrative Procedure Act. The State revised their regulations based on legislative amendments to the State's Administrative Procedure Act and the public record laws which imposed additional requirements on the Nebraska Department of Environmental Quality. Specifically, revisions are being made to definitions, filings and correspondence, public record availability and confidentiality, public hearings, contested cases, emergency proceeding hearings, declaratory rulings, rulemaking and variances. These revisions do not impact air quality, do not revise emission limits or procedures, nor do they impact the State's ability to attain or maintain the National Ambient Air Quality Standards.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2018-0307. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7391, or by email at crable.gregory@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. Have the Requirements for Approval of a SIP Revision Been Met?
- III. Response to Comments.
- IV. What Action is EPA Taking?
- V. Incorporation by Reference.
- VI. Statutory and Executive Order Reviews.
- I. What is Being Addressed in this Document?**

EPA is taking final action to approve revisions to the SIP submitted by the State of Nebraska on August 28, 2014. This action will amend the SIP to revise title 115 of the Nebraska Administrative Code. Title 115 addresses the legal practices and procedures that govern the Nebraska Department of Environmental Quality (NDEQ) relating to public record law and the State's Administrative Procedure Act. EPA proposed approval of Nebraska's SIP submission in its action published in the **Federal Register** on June 5, 2018, at 83 FR 25977. The last revision to title 115, Rules of Practice and Procedure, was approved on January 4, 1995, at 60 FR 372. Since that time, the legislature has amended the Administrative Procedure Act and the public record laws which impose additional requirements on NDEQ. NDEQ has adopted the revisions to title 115 and has requested EPA amend the SIP.

This action amends the SIP by revising chapter 1, Definitions of Terms; chapter 2, Filings and Correspondence; chapter 3, Public Records Availability; chapter 4, Public Records Confidentiality; chapter 5, Public Hearings; chapter 7, Contested Cases; chapter 8, Emergency Proceeding Hearings; chapter 9, Declaratory Rulings; and chapter 10, Rulemaking. Also, this action approves the revision to the chapter titles for chapters 2, 4, 8, 9 and 10. No revisions are being made to chapter 6, Voluntary Compliance. Chapter 11, Variances, is being

deleted. The revisions to title 115 are numerous and can be found in the August 28, 2014 State submission which is part of the docket.

Specifically, the changes to chapters 1, 2, 7, 8, 9 and 10 conform regulatory language to the Attorney General's model rules. Revisions to chapters 3 and 5 better describe the procedures already in place by practice for obtaining public records and public hearings on permit decisions or fact-finding hearings that are required by law. Revisions to chapter 4 clarify the procedures for asserting a claim of confidentiality trade secrets. Finally, chapter 11 is being deleted from title 115 because it is duplicative and found in chapter 33 of title 129.

EPA is approving these revisions as they are not fundamentally different from a procedural standpoint from existing rules. These revisions do not impact air quality. The revisions do not revise emission limits or procedures, nor do they impact the state's ability to attain or maintain the National Ambient Air Quality Standards.

II. Have the Requirements for Approval of a SIP Revision Been Met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The revised title 115 chapters were placed on public notice on January 30, 2004, and a public hearing was held by the NDEQ on March 5, 2004. During the public hearing NDEQ received three comments. NDEQ addressed each of the comments and made no change to the rule based on comments received. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above, and as demonstrated in the documents in the docket, the revisions meet the substantive SIP requirements of the Clean Air Act (CAA), including section 110 and implementing regulations.

III. Response to Comments

The EPA proposed action on this SIP, published in the **Federal Register** on June 5, 2018, (83 FR 25977) received no comments.

IV. What Action is EPA Taking?

EPA is taking final action to amend the Nebraska SIP. This action will amend the SIP to revise title 115 of the Nebraska Administrative Code "Nebraska Rules of Practice and Procedure." The revisions to title 115 update the NDEQ rules of practice and

procedure to incorporate legislative changes that have been made to the State's Administrative Procedure Act and the public record laws.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Nebraska Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

¹ 62 FR 27968 (May 22, 1997).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those

areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: _____

August 16, 2018

James B. Gulliford,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart CC - Nebraska

2. Amend §52.1420(c) by:

a. Revising the entries for citations 115-1, 115-2, 115-3, 115-4, 115-5, 115-7, 115-8, 115-9, and 115-10;

b. Removing the entry for citation 115-11.

The revisions read as follows:

§ 52.1420 Identification of plan.

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(c) * * *

EPA-Approved Nebraska Regulations

Nebraska citation	Title	State effective date	EPA approval date	Explanation
STATE OF NEBRASKA				
Department of Environmental Quality				
* * * * *				
Title 115—Rules of Practice and Procedure				
115-1	Definitions of Terms	6/8/2004	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
115-2	Petition for Declaratory Order	6/8/2004	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

Nebraska citation	Title	State effective date	EPA approval date	Explanation
115-3	Public Records Availability	6/8/2004	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
115-4	Confidentiality for Trade Secrets	6/8/2004	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
115-5	Public Hearings	6/8/2004	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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115-7	Contested Cases	6/8/2004	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
115-8	Intervention in a Contested Case	6/8/2004	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
115-9	Ex Parte Communications Prohibited	6/8/2004	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
115-10	Petition for Rulemaking	6/8/2004	[Insert date of publication in the Federal Register] [Insert Federal Register citation],	
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